

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 08-08431 DMG (FFMx)** Date **July 6, 2010**

Title ***FTC Commercial Corp. v M&C Apparel Group, Inc., et al.*** Page **1 of 2**

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

YOLANDA SKIPPER

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE REMANDED TO LOS ANGELES COUNTY
SUPERIOR COURT**

On December 19, 2008, Defendants Green Mochi, LLC, Armen Gregorian, and Mike & Chris, LLC (“Removing Defendants”) removed this action from Los Angeles County Superior Court on the basis of the Court’s federal question jurisdiction over a trademark infringement claim (seventh cause of action) asserted among the state law claims in Plaintiff’s state court complaint (“Original Complaint”). *See* 28 U.S.C. §§ 1331, 1441. The next month, on January 14, 2009, Plaintiff filed a First Amended Complaint (“FAC”). On February 5, 2009, Removing Defendants filed a motion to dismiss the FAC.

Before the Court had ruled on the pending motion to dismiss the FAC, on April 1, 2009, the Court granted Removing Defendants’ motion to stay this litigation as barred by the automatic stay provision of the U.S. Bankruptcy Code, *see* 11 U.S.C. § 362, because the property at issue in this litigation was the property of the bankruptcy estate created by Defendant M&C Apparel’s January 15, 2009 filing for Chapter 7 bankruptcy. Several months later, on October 13, 2009, the Court issued an order removing this case from the Court’s active caseload pending further application by the parties or Order of the Court. On November 19, 2009, the Court granted a request to reopen and have the action restored to the Court’s active caseload.

On April 19, 2010, based on the stipulation of the parties, the Court deemed Plaintiff’s Second Amended Complaint (“SAC”) filed as of April 9, 2010, and the Court ordered Defendants to file and serve a responsive pleading by May 10, 2010. On May 10, Removing Defendants filed a Motion to Dismiss the SAC [#64], and briefing on that motion closed on June 14, 2010. On June 25, 2010, the Court took the Motion to Dismiss the SAC under submission and vacated the June 28, 2010 hearing. [#78] On June 25, 2010, Defendant Continental Business Credit filed a Motion to Dismiss [#79]. Briefing on that motion will close on July 12, 2010, and the motion is scheduled for hearing on July 26, 2010.

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The Court's review of the briefing submitted in support of the pending motions to dismiss raises serious questions about whether this case should remain in federal court now that the only federal question—Plaintiff's claim for trademark infringement under the Lanham Act—has been dropped from the operative SAC. Where no federal claims remain in an action, district courts generally decline to exercise jurisdiction over the remaining state law claims and remand those supplemental claims to the state court or order those claims dismissed without prejudice. *See* 28 U.S.C. § 1367(c)(3); *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 623, 98 L. Ed. 2d 720 (1988); *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997) (*en banc*).

Accordingly, Defendants are ORDERED TO SHOW CAUSE in writing why this action should not be remanded to Los Angeles County Superior Court given the absence of any federal claims in the SAC. Defendants shall file their response to this Order to Show Cause ("OSC") by **July 20, 2010**. The hearing on Defendant Continental Business Credit's motion to dismiss, set on July 26, 2010 at 9:30 a.m., is taken off calendar, pending the Court's decision in connection with this OSC. Briefing on that motion is stayed. Both Defendant Continental Business Credit's motion to dismiss [#79] and Removing Defendants' motion to dismiss [#64] are subject to being re-set for hearing should the Court deem oral argument necessary.

IT IS SO ORDERED.

cc: all parties